

# FRANCE'S HUMAN RIGHTS OBLIGATIONS IN THE CONTEXT OF THE CLIMATE CRISIS

## REPORT OF *NOTRE AFFAIRE À TOUS* TO THE HUMAN RIGHTS COMMITTEE 28<sup>TH</sup> MAY 2021



### EXECUTIVE SUMMARY

As the Human Rights Committee and other UN-Human Rights Treaty Bodies have repeatedly acknowledged, State parties to the Convention have obligations to reduce their greenhouse gas emissions in order to protect the climate and avoid climate-induced adverse impacts on human rights, as well extraterritorial obligations to respect and protect human rights where a sufficient link between the non-enjoyment of a protected right and the state in question exists. This link clearly exists for certain extraterritorial situations with severe climate impacts, for example emissions from international trade (import of goods, sea and air transport) and from transnational companies under the state's jurisdiction. In the view of the submitting organization, the existing legal framework in France is insufficient to implement these obligations. On one hand, it does not implement its GHG reduction targets, which are furthermore clearly insufficient in light of the principles of the Paris Agreement and some scientific estimations of its fair share. On the other hand, the strategy of France in terms of extraterritorial emissions is almost non-existent and clearly in contravention of its human rights duties.

We thus urge the Human Rights Committee to ask France the following question:

**provide information on whether the State party's emission reduction goals for greenhouse gases, in light of France's obligations under Article 6 of the Covenant, are in line with the principles of progression, highest possible level of ambition, and common but differentiated responsibilities, including by taking into account extraterritorial emissions produced or associated with any actor, public or private, falling under the jurisdiction of the State party.**

### 1. Submitting Organisation

**NOTRE AFFAIRE A TOUS** is a French NGO created in 2015 using litigation and advocacy tools to improve environmental and climate protection laws. Notre affaire à tous is *inter alia* at the origin of two groundbreaking climate legal actions, one against the French State (in the so-called *L'affaire du siècle*) and the other against the multinational oil company Total.

## 2. Climate change and the right to life

According to the latest report of the Intergovernmental Panel on Climate Change (IPCC), global average temperatures have already increased by more than 1°C over pre-industrial levels.<sup>1</sup> This increase of global temperatures is more rapid than any change of temperatures on Earth over the past millennia.<sup>2</sup> The current level of temperature increase has already had severe implications for communities across the world. It has particularly affected those exposed to climate-related extreme events such as hurricanes, droughts, floods and wildfire, which may destroy homes and livelihoods through not only their immediate effect, but also through heightened food and water insecurity.

In October 2018, the IPCC released a Special Report on 1.5°C of Warming, which concluded that “climate-related risks for natural and human systems are higher for global warming of 1.5°C than at present, but lower than at 2°C”.<sup>3</sup> The IPCC has stressed that risks increase with every additional magnitude of warming.

The IPCC notes that without significant additional emissions reduction efforts, an increase of average temperatures by more than 4°C is “more likely than not”. According to the IPCC, “the risks associated with temperatures at or above 4°C include substantial species extinction, global and regional food insecurity, consequential constraints on common human activities, and limited potential for adaptation in some cases (high confidence).” The IPCC has further reiterated that the adverse effects of climate change above 1.5°C will directly contribute to heightened vulnerability to injury and disease,<sup>4</sup> which in turn result in loss of life. The French government has formally endorsed the IPCC’s findings through the adoption of the 1.5°C Special Report and all reports produced by the IPCC.

The Human Rights Committee has recognized that climate change affects the right to life. In its General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, the Committee stressed that “environmental degradation, climate change and unsustainable development constitute a serious threat to the right to life.”<sup>5</sup> The Committee reiterated this in its Concluding Observations (COBs) to Dominica,<sup>6</sup> Cabo Verde,<sup>7</sup> and Kenya,<sup>8</sup> and in its recent List of Issues to the Philippines,<sup>9</sup> Guyana,<sup>10</sup> Indonesia,<sup>11</sup> the Maldives,<sup>12</sup> Zimbabwe,<sup>13</sup> Fiji,<sup>14</sup> Nepal,<sup>15</sup>

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<sup>1</sup> IPCC Special Report, ‘Global warming of 1.5°C. An IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty’ (2018) (SR 1,5), finding A1.

<sup>2</sup> <<https://climate.nasa.gov/evidence/>>, (last accessed on 28.05.2021)..

<sup>3</sup> SR 1,5, finding A3.

<sup>4</sup> IPCC (2014) *Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 717

<sup>5</sup> Human Rights Committee, “General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life\*” (October 2018) CCPR/C/GC/36 Para. 9.4

<sup>6</sup> UN Doc CCPR/C/DMA/COAR/1

<sup>7</sup> UN Doc CCPR/C/CPV/CO/1/Add.1

<sup>8</sup> UN Doc CCPR/C/KEN/CO/4

<sup>9</sup> UN Doc CCPR/C/PHL/Q/5

<sup>10</sup> UN Doc CCPR/C/GUY/QPR/3

<sup>11</sup> UN Doc CCPR/C/IDN/QPR/2

<sup>12</sup> UN Doc CCPR/C/MDV/QPR/2

<sup>13</sup> UN Doc CCPR/C/ZWE/QPR/2

<sup>14</sup> UN Doc CCPR/C/FJI/QPR/1

<sup>15</sup> UN Doc CCPR/C/NPL/QPR/3

Seychelles,<sup>16</sup> and Tanzania.<sup>17</sup> In its ruling *Ioane Teitiota v. New Zealand*, the Committee stated that the “effects of climate change in receiving states may expose individuals to a violation of their rights under Article 6 of the Covenant”.<sup>18</sup> The connection between the Right to Life and the negative impacts of climate change is thus clear.

### 3. France’s climate mitigation policies

#### France’s domestic emissions

While the French government has adopted and implemented a number of policies and strategies to reduce emissions of greenhouse gases (GHG), these measures have failed to lead to an adequate reduction of emissions. According to data published by the government itself, emissions of GHG have for instance increased between 2014 and 2017 and have stagnated over a longer period. Consequently, France has missed its own target of an annual carbon budget between 2015-2018 by 3.5%,<sup>19</sup> which led the French Administrative Court of Paris to hold the State accountable for its failure to prevent the ecological and climate injury resulting therefrom.<sup>20</sup>

French Government to reach its 2050 carbon neutrality objective are neither consistent with the Paris Agreement’s objective nor with its principles. Article L. 100-4 of the French Energy Code, which sets out France’s decarbonisation pathway, was only partially and insufficiently revised by the 2019 Energy and Climate Act ([LOI n° 2019-1147](#)).

Firstly, regarding the 2030 target, it only requires France to reduce its emissions by 40% compared to 1990 although this target was already enacted in 2015.<sup>21</sup> This stagnation runs counter to the principle of progression over time enshrined in article 3 of the Paris Agreement. In addition to that, even though the European Union already announced in 2019 its intention with its Green Deal to ramp up the 2030 target to cut GHG emissions by 55% compared to 1990 levels, France did not prepare the implementation of this reform domestically, although its Parliament currently debates another climate bill.<sup>22</sup> This inertia blatantly mischaracterizes the urgency of the climate threat.

Secondly, regarding the 2050 target, France only foresees cutting GHG emissions by 6 or more compared to the 1990 level by the middle of the century. This objective falls short of reaching the IPCC recommended reductions of GHG emissions of 91%-104% by 2050 in comparison to 2010 levels to limit global warming to 1.5°C with no or low overshoot.<sup>23</sup> However the 1.5°C scenario is necessary to comply with the Paris goals as it provides for a 50% chance of limiting global warming to 1.5°C and only a 85% chance of limiting global warming to 2°C.<sup>24</sup> As noted very recently by the Dutch Court of

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<sup>16</sup> UN Doc CCPR/C/SYC/QPR/1

<sup>17</sup> UN Doc CCPR/C/TZA/QPR/5

<sup>18</sup> CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), (January 2020), available at: <https://www.refworld.org/cases,HRC,5e26f7134.html>

<sup>19</sup> Haut Conseil pour le Climat, “Agir en cohérence avec les ambitions” (2019), at 28.

<sup>20</sup> *Notre Affaire à Tous et autres c. France*, N°1904967, 1904968, 1904972, 1904976/4-1, 3 février 2021, <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Communiqués-de-presse/L-affaire-du-siècle> last accessed on 28.05.2021).

<sup>21</sup> See article 1 of [LOI n° 2015-992](#) du 17 août 2015 relative à la transition énergétique pour la croissance verte (1).

<sup>22</sup> See [projet de loi n° 3875](#) portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets.

<sup>23</sup> *supra* note 9, p. 19 (table and indications regarding scenarios P1, P2, P3, P4)

<sup>24</sup> IPCC, *Special Report: Global Warming of 1.5 °C*, Summary for Policymakers, p. 32 (2018); Climate Analytics 2015, Timetables for zero emissions and 2050 emissions reductions: State of the Science for the ADP Agreement.

Den Haag in the Shell case, 'Since there still is a 15% chance that the earth will rise by over 2°C, these reduction pathways offer the best possible chance to prevent the most serious consequences of dangerous climate change'.

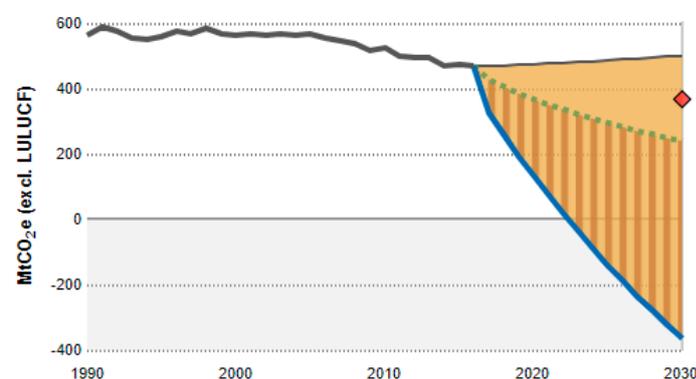
Thirdly, article L. 100-4 of the French Energy Code allows the government to rely on so-called negative emissions to reach carbon neutrality. Negative emissions refer to either natural carbon sinks, such as forests or to technological solutions such as carbon capture and storage. However, global warming threatens natural carbon sinks by increasing the gravity and frequency of forest fires.<sup>25</sup> Concerning technological solutions, also called 'carbon dioxide removal' (CDR), their development is very uncertain which led the IPCC to declare that 'CDR deployed at scale is unproven, and reliance on such technology is a major risk in the ability to limit warming to 1.5°C.'<sup>26</sup> As noted by the Dutch Supreme Court and the German Constitutional Court in their respective landmark historic rulings on climate change, postponing action by relying on negative emissions such as CDR is incompatible with the principle of precaution.<sup>27</sup>

Overall, France's GHG reduction pathway does neither reflect its highest possible ambition, nor its common but differentiated responsibilities. The emission reduction recommendations made by the IPCC concern global GHG emissions. Given the historic responsibility and technological and financial capacity of France, it has to set and implement more ambitious goals to contribute its 'fair share' to global emission reduction and protect the human rights of climate-vulnerable groups. The current pathway disproportionately shifts the GHG reduction burden on other States, in particular to developing States which clearly violates the fundamental principles of the Paris Agreement.

These shortcomings are illustrated by the graphic below provided by the Climate Equity Reference Calculator<sup>28</sup>, a scientific method to calculate countries' fair share, showing that France should be carbon neutral shortly after 2020, even if not so stringent criteria are applied. Given that France is unable to achieve carbon neutrality in such a short timeframe, France should compensate for its flagrant shortcoming by dramatically increasing climate finance overseas, in order to help developing countries to substantially mitigate global warming.

#### Country/region report in 2030 for France

[Show settings](#)



<sup>25</sup> IPCC, *Special Report: Global Warming of 1.5 °C*, Summary for Policymakers, p. 34 (2018)

<sup>26</sup> IPCC, *Technical Summary*, In: *Global Warming of 1.5°C*, p. 34, 2018.

<sup>27</sup> Dutch Supreme Court, *Urgenda Case*, ECLI:NL:HR:2019:2006, Hoge Raad, 19/00135, (12/20/2019), English translation released in 2020, § 7.2.5; German Constitutional Court, 1 BvR 2656/18 - - 1 BvR 78/20 - - 1 BvR 96/20 - - 1 BvR 288/20 -, zum Beschluss des Ersten Senats vom 24. März 2021, § 227.

<sup>28</sup> Kemp-Benedict et al. (2019) *The Climate Equity Reference Calculator*. Berkeley and Somerville: Climate Equity Reference Project (EcoEquity and Stockholm Environment Institute), [Online]. Available: <https://calculator.climateequityreference.org> (last accessed on 28.05.2021).

## France's extraterritorial emissions

Firstly, according to the 2019 [report on carbon neutrality of the High Council for the Climate](#) (HCC), a new French public counselling body of climate experts<sup>29</sup>, indirect imported net emissions of France represented 60% of territorial emissions in 2015 (271 MtCO<sub>2</sub>e of imported emissions, 445 MtCO<sub>2</sub>e of territorial emissions<sup>30</sup>). These emissions have doubled since 1995.<sup>31</sup> While Article 8 of the recent Energy and Climate Act ([LOI n° 2019-1147](#)) has introduced accounting for these indirect imported emissions, France has not adopted a binding strategy to reduce them. This policy is therefore falling short of lowering the volume of indirect emissions and thus in breach of France's extraterritorial human rights obligations according to the submitting organizations.

Secondly, France currently fails to account for the GHG emissions from international maritime transport and aviation that is linked to France in its binding GHG reduction targets, despite their increasing carbon footprint. Maritime transport emissions from ships sailing from and to France amounted to 9.76 MtCO<sub>2</sub> in 2019, meaning more than the emissions of cars in the ten major cities of the country and the region of Grand Est.<sup>32</sup> In 2018, the aviation sector emitted 23.2 MtCO<sub>2</sub><sup>33</sup> adding onto the territorial emissions of 445 MtCO<sub>2</sub>). Worse, these emissions have increased by 40% between 1990 and 2017 and are projected to continue their increase in the future without additional measures. Together, maritime and air transport linked to France significantly contribute to GHG emissions and should therefore be accounted for in the national climate strategy with binding reduction targets in order to comply with France's extraterritorial human rights obligations.

Thirdly, France does not impose - at least *explicitly* - a duty of devising an economic model compatible with the Paris Agreement on companies established in its territory, in particular on French parent companies of large multinational groups, even though such corporate groups have a cumulative carbon footprint greatly exceeding that of the French State:

- the cumulative direct & indirect GHG emissions of the oil firm Total resulting from the use of its products (so-called scope 1, 2 and 3 emissions<sup>34</sup>) amount to 458 million of tonnes of CO<sub>2</sub><sup>35</sup>, which is equivalent to the French territorial emissions (442 million of tonnes of CO<sub>2</sub>).<sup>36</sup>

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<sup>29</sup> The "*Haut Conseil pour le climat*" was created in 2018 to inform the public and to counsel the government for the objective of achieving net-zero emissions in 2050 and thus respect the international climate framework. It issues an assessment report every year and can develop a special report on demand by the government. See <https://www.hautconseilclimat.fr/> (last accessed on 28.05.2021).

<sup>30</sup> HCC, *Rapport Annuel Neutralité Carbone* (2019) p. 30

<sup>31</sup> *Ibid.*, p. 34

<sup>32</sup> Transport & Environment, *EU Shipping's Climate Record* (2019) p. 20, [https://www.transportenvironment.org/sites/te/files/publications/Study-EU\\_shippings\\_climate\\_record\\_20191209\\_final.pdf](https://www.transportenvironment.org/sites/te/files/publications/Study-EU_shippings_climate_record_20191209_final.pdf)

<sup>33</sup> Ministère de la Transition Écologique et Solidaire, *Les émissions gazeuses liées au trafic aérien en France en 2018* (2018) p. 6, [https://www.ecologique-solidaire.gouv.fr/sites/default/files/Emissions\\_gazeusesVF.pdf](https://www.ecologique-solidaire.gouv.fr/sites/default/files/Emissions_gazeusesVF.pdf)

<sup>34</sup> The topology Scope 1, 2 and 3 of GHG emissions is a standardized way of accounting emissions, in particular in the private sector. Scope 1 emissions refer to the emissions directly generated by the respective actor, for instance the on site combustion of fossil fuels or gas leakage. Scope 3 emissions refer to all indirect emissions of the activities of the organisation, such as the transport and use of products, or emissions by employees. Scope 3 emissions are often very high, especially for the energy and banking sector. See the different categories of scope 3 emissions here <https://ghgprotocol.org/scope-3-technical-calculation-guidance> (last accessed on 28.05.2021).

<sup>35</sup> Total, Document de référence, 2018, p. 202.

<sup>36</sup> Haut Conseil pour le Climat, *Agir en cohérence avec les ambitions*, 2019, p.29.

- the GHG emissions related to the financial activities of four banks (BNP Paribas, Crédit Agricole, Société Générale, BPCE/Natixis) are four times higher than the French territorial emissions (scope 3 emissions).<sup>37</sup>
- 27 companies have a cumulative carbon footprint exceeding French territorial emissions by a factor of eleven (by taking into account scope 1 - 3 emissions of the companies).<sup>38</sup>

In addition, the French agro-food and financial industries are responsible for driving deforestation in the Congo Basin and the Amazon by supplying from and investing in large agribusinesses such as beef, soy and palm oil traders. Between 2013- 2019 the investment of large financial actors amounted to over 2 billion euros, making the French financial sector the second largest EU contributor to the funds of those companies.<sup>39</sup> This is especially concerning since deforestation is a major driver of greenhouse gas emissions<sup>40</sup>, thus driving climate induced human rights violations.

These facts and figures show the necessity to *precisely and adequately* regulate emissions of the private sector, especially indirect emissions related to transnational corporations.

Adopted recently, the French Duty of Vigilance Law n°2017-399 now provides an obligation on parent companies to identify and prevent risks to human rights and the environment that could occur as a result of their business activities, including in relation to their own activities, and the ones of their subsidiaries, suppliers or subcontractors. Many companies use the lack of explicit rules in terms of the applicability of the Duty of Vigilance in climate matters to evade its substantial requirements. For example, the oil firm Total, respondent in a French high-profile climate case that our organisation initiated, contest that the Duty of Vigilance applies in the context of climate-induced harms resulting from the combustion of its fossil fuel products (so-called scope 3 emissions).<sup>41</sup> Such an interpretation would seriously impair the ability of the law to prevent climate-related threats on human rights, thereby failing to uphold the extraterritorial obligations of the State under the Covenant.

The current position of Total and other French corporate actors is also at odds with the recent landmark judgement of the District Court of Den Haag in the Shell case which ordered to the parent company of Royal Dutch Shell 'to limit or cause to be limited the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy-carrying products of the Shell group to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels'.<sup>42</sup>

Our legal action against Total, initiated in June 2019 by serving to the company a notice of liability and summons in January 2020, face substantial delays due to the objections of the respondent company

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<sup>37</sup> BNP Paribas with 782 million tons of CO<sub>2</sub>, Crédit Agricole with 585 million tons, Société Générale with 505 million tons, BPCE/Natixis with 163 million tons of CO<sub>2</sub>, *supra* note 22, pp. 36-51; Friends of the Earth & Oxfam, La colossale empreinte carbone des banques françaises : une affaire d'Etat (2019), <https://www.oxfamfrance.org/rapports/empreinte-carbone-des-banques-francaises/> (last accessed 27.05.2021)

<sup>38</sup> *supra* note 26

<sup>39</sup> Global Witness Report, *The role of French Banks in Global Forest Destruction* (2020) <https://www.globalwitness.org/en/campaigns/forests/role-french-banks-global-forest-destruction/> (last accessed on 28.05.2021). The emissions of only one oil corporate group Total account for approximately 1% of the global emissions and are equivalent to the French domestic emissions. NAAT, *De la vigilance climatique de les multinationales* (2021) p. 25, <https://notreaffaireatous.org/wp-content/uploads/2021/03/Benchmark-Vigilance-climatique-NAAT-6.3.21-compress%C3%A9e%81.pdf> (last accessed 27.05.2021)

<sup>40</sup> CESCR Statement (No. 6) on Climate Change, E/C.12/2018/1 (2018)

<sup>41</sup> See case summary of *Notre affaire à tous et al v. Total* and related English documents here, <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-total/> (last accessed 28.05.2021).

<sup>42</sup> Rechtbank Den Haag, C/09/571932 / HA ZA 19-379, 26-05-2021, § 5.3.

to the jurisdiction of the French civil courts, although the Court of the first instance granted our requests in January 2021 to not remove the case to commercial Courts. Total subsequently appealed this judgement. These delays are seriously impairing our right to be heard on the merits in due course, which is even more problematic in the light of urgent threats represented by the climate crisis.

Therefore, in light of France's own human rights obligations, France shall not wait for the results of our legal actions. The government must intervene as soon as possible in the regulation of transnational companies, by issuing for instance a decree related to the Duty of Vigilance Law to compel companies to devise a business model that is consistent with the goals of the Paris Agreement. The government is also explicitly authorised by the provisions of the Duty of Vigilance Law to do so.<sup>43</sup> This opinion is by the way shared by the French National Human Rights Institution, which recommends in its most recent report that "the public authorities [should] strengthen the control of the application of the Duty of Vigilance Law with regard to climate change."<sup>44</sup>

#### 4. States' obligations under the ICCPR in the context of climate change

Article 6 of the ICCPR provides that "[e]very human being has the inherent right to life. This right shall be protected by law."<sup>45</sup> Its fulfilment has been linked to other human rights such as the right to food, water and an adequate standard of living.<sup>46</sup> The Human Rights Committee clarified the scope of the Right to Life in its General Comment n.36, emphasizing that a broad range of obligations can be interpreted from this right that entitles individuals to be free from both acts and omissions that cause, or may be expected to cause, death or impair the enjoyment of a life with dignity.<sup>47</sup> The Committee's GC n.36 further stated that the right to life requires states to take "appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" and "these general conditions may include ... degradation of the environment".<sup>48</sup> The Committee further states that "[o]bligations of States parties under international environmental law should thus inform the contents of Article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law."<sup>49</sup> In footnote 259 of the GC 36, it references the Paris Agreement explicitly, underscoring the connection between international climate law and the ICCPR.

Therefore, the international obligations under the UNFCCC and Paris Agreement must inform France's obligations under the ICCPR. Under the Paris Agreement, ratified by France on 5 Oct 2016<sup>50</sup> the State

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<sup>43</sup> See provision of the Duty of Vigilance Law: "*Un décret en Conseil d'Etat peut compléter les mesures de vigilance prévues aux 1° à 5° du présent article. Il peut préciser les modalités d'élaboration et de mise en œuvre du plan de vigilance, le cas échéant dans le cadre d'initiatives pluripartites au sein de filières ou à l'échelle territoriale.*"

<sup>44</sup> Commission nationale consultative des droits de l'homme (CNCDDH), Avis « Urgence climatique et les droits de l'Homme », 27 mai 2021, p. 25 <https://www.cncdh.fr/sites/default/files/a - 2021 - 6 - urgence climatique et droits de l'homme mai 2021.pdf> (last accessed 28.05.2021).

<sup>45</sup> ICCPR, Article 6.

<sup>46</sup> Committee on the Rights of the Child (CRC), 'General Comment No. 7 (2005): Implementing Child Rights in Early Childhood' (20 September 2006), para. 10.

<sup>47</sup> Human Rights Committee, 'CCPR General Comment No. 36 on Article 6 (Right to life)' (30 October 2018), CCPR/C/GC/36 Para 3.

<sup>48</sup> Human Rights Committee, "General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life\*" (October 2018) CCPR/C/GC/36 Para. 26

<sup>49</sup> Human Rights Committee, "General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life\*" (October 2018) CCPR/C/GC/36 paragraph 62

<sup>50</sup> United Nations Treaty Collection (2020) "Paris Agreement: Ratification Status" [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en) (last accessed 28.05.2021).

parties committed to “holding the increase in the global average temperature to *well below* 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.<sup>51</sup> The principles of equity and of common but differentiated responsibilities and respective capabilities under the UNFCCC inform this commitment, and imply that industrialized countries have a greater responsibility to contribute to these collective efforts. Given the historic responsibility and technological and financial capacity of France, the State party has to set more ambitious goals to contribute its ‘fair share’ to global emission reduction and protect the human rights of climate-vulnerable groups, in light of the best available science scenarios to avoid breaching the 1.5°C temperature threshold.

Many international institutions have recognized that the right to life implies that States have a duty to prevent foreseeable human rights harms caused by climate change, both within and outside of their jurisdictions.<sup>52</sup> For instance, in its COB to Argentina, the CESCR expressed concern that the State party’s fossil fuel extraction plan would run “counter to the State party’s commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of economic and social rights by the world’s population and future generations”.<sup>53</sup> In its Concluding Observations to Norway, the CEDAW recommended that the government review its policy on the extraction of oil and gas, given the extraterritorial obligations emanating from the Convention, because of the disproportionate negative effects of climate change on the rights of women.<sup>54</sup> The duty of States to prevent foreseeable human rights harms implies their duty to review their emission reduction policies, as the emissions arising from activities that are conducted domestically as well as extraterritorially by actors that are subject to France’s jurisdiction are a key contributor to global warming.<sup>55</sup>

In September 2019, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Committee on the Rights of Persons with Disabilities (CRPD) adopted a joint statement on human rights and climate change, articulating the legal obligations of the 196 States that have signed the relevant UN human rights treaties in the context of climate change.<sup>56</sup> The statement stresses, among other things, that “in order for States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate

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<sup>51</sup> UNFCCC, Paris Agreement adopted at the 21<sup>st</sup> Session of the Conference of the Parties (12 December 2015) (Paris Agreement), Article 2.1.a.

<sup>52</sup> See, for instance, Articles 55 and 56 of the United Nations Charter; Committee on Economic, Social and Cultural Rights Concluding Observations on Australia (2017), paras 11 & 12; CESCR Concluding Observations on Argentina (2018), para 13 & 14; CESCR General Comment #24 (E/C.12/GC/24), paras 26-28; Committee on the Rights of the Child Concluding Observations on Norway (2018), para 27; CRC Concluding Observations on Japan (2019), para 37; Committee on the Elimination of Discrimination Against Women General Recommendation #37 ‘on the gender-related dimensions of disaster risk reduction in the context of climate change’ (CEDAW/C/GC/37), paras 43-46; CEDAW Concluding Observations on Australia (2018), paras 29-30; CEDAW Concluding Observations on Norway (2017), paras 14-15.

<sup>53</sup> UN Doc E/C.12/ARG/CO/4, para. 13.

<sup>54</sup> UN Doc CEDAW/C/NOR/CO/9.

<sup>55</sup> Five UN human rights treaty bodies issue a joint statement on human rights and climate change. Joint Statement on “Human Rights and Climate Change” [https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#\\_edn8](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#_edn8) (last accessed 27 May 2021)

<sup>56</sup> *Ibid.*

resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development”.

The Human Rights Committee has already addressed the issue of emission reduction, as well as regulation of private and public sectors, in relation to climate change and the protection of the right to life. In its Lol to Kenya, in 2020, the Committee asked the State party to provide information on “efforts to reduce carbon emissions, including investment in sustainable energy sources”. In its Lols to the Maldives and Nepal, it requested information on “measures aimed at...preventing and addressing, including through regulation of the public and private sectors, the current and foreseeable future effects of climate change and environmental degradation”. In its Lol to Tanzania and Guyana, the Committee addressed fossil fuel extraction, due to its contribution to GHG emissions. The Committee asked Tanzania to “respond to concerns about the negative local and global impacts of the construction of the East Africa Crude Oil Pipeline on the climate change”, and requested that Guyana “provide information on the steps taken to prevent and mitigate the negative effects of climate change, particularly in the consequence of ... offshore oil production” and “respond to concerns that large scale oil extraction significantly increases greenhouse gas emissions...adversely affecting the most vulnerable groups in the State party” in relation to its Article 6 obligations.<sup>57</sup> All the above questions reflect an understanding that greenhouse gas emissions contribute to climate change, which adversely affects the most vulnerable groups and infringes on their Right to Life.

Other human rights treaty bodies have looked into States’ obligations to reduce their emissions and have requested that they review their mitigation policies in line with their human rights obligations.<sup>58</sup> For instance, CESCR recommended that Australia “revise its climate change and energy policies”, and “take immediate measures aimed at reversing the current trend of increasing absolute emissions of greenhouse gases, and pursue alternative and renewable energy production.” Also in the context of Australia’s mitigation policies, CEDAW expressed concern about “the State party’s greenhouse gas emissions of 1.4 percent of global emissions, without accounting for the emissions embedded in exports”. In its COB to Argentina, the CESCR expressly mentioned the 1.5°C target under the Paris Agreement when reviewing the State party’s fossil fuel extraction plans.<sup>59</sup> The same Committee recommended that Belgium “intensify its efforts to achieve the greenhouse gas emission reduction targets for the year 2020 and revise upwards the target for the year 2030, so as to be consistent with the commitment to limit the temperature increase to 1.5°C”, and that the Council adopt the necessary measures to implement the EU strategy to make the transition to a zero net greenhouse gas emission economy by 2050.”<sup>60</sup>

With regard to France, the Committee on Economic, Social and Cultural Rights (CESCR) recently looked into France’s mitigation policies, requesting to “describe the measures that the State party intends to take in view of the delay in reducing its carbon dioxide emissions”, and to explain “how the impact of these measures on the most disadvantaged and marginalized groups will be assessed”, as well as “how the State party assesses the potential impact of climate change on the enjoyment of economic, social and cultural rights throughout its territory”.

As previously noted, the French Administrative Court of Paris even held the State accountable for its

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<sup>57</sup> UN Human Rights Committee, “List of Issues Prior to reporting to Guyana” (August 2020) CCPR/C/GUY/QPR/3 paragraph 14

<sup>58</sup> See, for instance, CESCR’s 2017 COBs to Australia (UN Doc E/C.12/AUS/CO/5) and Russia (UN Doc E/C.12/RUS/CO/6), and 2020 COB to Norway (UN Doc E/C.12/NOR/CO/6); CEDAW’s 2017 COB to Norway (UN Doc CEDAW/C/NOR/CO/9) and 2018 COB to South Korea (UN Doc CEDAW/C/KOR/CO/8)

<sup>59</sup> UN Doc E/C.12/ARG/CO/4, para. 13.

<sup>60</sup> UN Doc E/C.12/BEL/CO/5, para. 10.

past failure to meet its GHG reduction targets.<sup>61</sup> The current French GHG reduction pathway falls very short of reaching the 2030 objective of the European Green Deal that will be soon translated into the European Climate Law, although the new European decarbonisation strategy is still considered as insufficient by the scientific findings on the fair share of Europe, including the assessment of the Climate Action Tracker.<sup>62</sup>

France's obligation to reduce emissions in line with the best available science does not only apply to domestic emissions, but also those that are produced extraterritorially by actors that are under France's jurisdiction. The Committee has recognised that Article 6 creates a duty of due diligence, which obliges the State to protect the right to life from deprivations caused by actors whose conduct is not attributable to the State. In its General Comment No. 36, the Committee stressed that States "must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6".<sup>63</sup> The joint statement by five Human Rights Treaty Bodies reiterated that "States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk."

In the context of climate change, this suggests that States must look beyond their borders, to foreseeable impacts of their actions or those of private entities operating in their jurisdiction, which exacerbate climate change and violate human rights by threatening the Right to Life. Therefore, in upholding its duties under Article 6, France has an obligation to consider the extraterritorial threats to the Right to Life caused by actors under its jurisdiction or to which those actors contribute. This obligation must include the duty to regulate private actors subject to its jurisdiction, to ensure that their activities do not contribute to the violation of fundamental rights, by fuelling climate change.

Even though France adopted the Duty of Vigilance Law n°2017-399 that provides an obligation on parent companies to identify and prevent risks to human rights and the environment, many companies do not adequately implement the requirements of the Law in climate matters.<sup>64</sup> Furthermore our organisation faces substantial difficulties to enforce the Law due to issues related to the competence of jurisdictions, which undermines our right to seek a relief in due course with regards to the urgency of the climate crisis. We therefore believe the French government must regulate as soon as possible companies to compel companies to devise a business model that is consistent with the goals of the Paris Agreement. Our opinion is shared by the French National Human Rights Institution, which recommends in its most recent report that "the public authorities [should] strengthen the control of the application of the Duty of Vigilance Law with regard to climate change."<sup>65</sup>

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<sup>61</sup> *Notre Affaire à Tous et autres c. France*, N°1904967, 1904968, 1904972, 1904976/4-1, 3 février 2021, <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Communiqués-de-presse/L-affaire-du-siècle> (last accessed: 27 May 2021).

<sup>62</sup> <https://climateactiontracker.org/countries/eu/> (last accessed: 27 May 2021).

<sup>63</sup> *Ibid.*, para. 22.

<sup>64</sup> The emissions of only one oil corporate group Total account for approximately 1% of the global emissions and are equivalent to the French domestic emissions. NAAT, *De la vigilance climatique de les multinationales* (2019) p. 25, <https://notreaffaireatous.org/wp-content/uploads/2020/03/Rapport-General-Multinationales-NAAT-2020.02.01-1.pdf> (last accessed 27.05.2021)

<sup>65</sup> Commission nationale consultative des droits de l'homme (CNCDH), Avis « Urgence climatique et les droits de l'Homme », 27 mai 2021, p. 25 [https://www.cncdh.fr/sites/default/files/a\\_-\\_2021\\_-\\_6\\_-\\_urgence\\_climatique\\_et\\_droits\\_de\\_lhomme\\_mai\\_2021.pdf](https://www.cncdh.fr/sites/default/files/a_-_2021_-_6_-_urgence_climatique_et_droits_de_lhomme_mai_2021.pdf) (last accessed on 28.05.2021).

## Conclusion

As demonstrated above, France's climate action is inadequate in many ways. On one hand, it does not implement its GHG reduction targets, which are furthermore clearly insufficient in light of the principles of the Paris Agreement and some scientific estimations of its fair share. On the other hand, the strategy of France in terms of extraterritorial emissions (linked to international trade and transnational companies) is almost non-existent and clearly in contravention of its human rights duties.

We thus urge the Human Rights Committee to ask France to ask the following question to France **provide information on whether the State party's emission reduction goals for greenhouse gases, in light of France's obligations under Article 6 of the Covenant, are in line with the principles of progression, highest possible level of ambition, and common but differentiated responsibilities, including by taking into account extraterritorial emissions produced or associated with any actor, public or private, falling under the jurisdiction of the State party.**